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March 3, 1995

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BY HAND

Kathleen Wallman, Esq.
Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M St. N.W.
Washington, D.C. 20554

RE: CC DKT. No. 94-1
EX PARTE

Dear Kathleen:

As promised at Wednesday's Price Cap Discussion at the Department of Commerce Auditorium, enclosed is a copy of our legal analysis concerning the issue of whether the Education Coalition's proposal concerning the CPD constitutes a "tax." This analysis has been a part of the record in this proceeding since November 21, 1994.

I have also enclosed: (i) a copy of the Benton Foundation Report mentioned in Michelle Richards remarks (see page 8); (ii) an NEA study regarding the cost of connecting schools to the NII, also mentioned in Michelle Richards remarks (the study says nothing about libraries); and (iii) a study entitled "Recent Trends in Prices and Shareholder Returns in Local and Long Distance Telecommunications Markets." This is one of the reasons for the Coalition's position that the CPD is benefiting the interexchange carriers and not consumers.

The Education Coalition very much appreciates the opportunity afforded to it to present its views at the Price Cap Discussion. We have sent a copy of this letter and its enclosures to the Secretary and asked that it be made part of the record in CC Docket No. 94-1.

Sincerely,

Henry M. Rivera
Henry M. Rivera

cc: Michael Katz, Ph.D. (w/encl.)
Mr. William F. Caton, Secretary,
Federal Communications Commission

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November 21, 1994

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William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: CC Dkt. No. 94-1 (Ex Parte Filing)

Dear Mr. Caton:

This letter, on behalf of the education coalition, answers two criticisms against the coalition's proposal that the FCC modify its existing "consumer productivity dividend" ("CPD") requirement in order to dramatically increase telecommunications infrastructure investment in the nation's schools and libraries.^{1/} Under the Commission's existing price cap rules, local telephone companies must provide a CPD to interstate carriers by pricing the access services they sell to these carriers 0.5 percent below the maximum price that otherwise would be permissible. The agency requires a modest price subsidy to interstate carriers on the theory that they might pass the benefits of the subsidy to their customers by lowering the price they charge for interstate communications ser-

^{1/} The education coalition is composed of The American Library Association, The Council of Chief State School Officers, The National Association of Secondary School Principals, the National Education Association, and the National School Boards Association. The coalition made its proposal to the FCC in written comments filed June 29, 1994 in response to the agency's request for suggestions on how to improve existing price cap rules for local telephone companies. See Notice of Prop. Rulemaking in CC Dkt. No. 94-1, 9 FCC Rcd. 1687 (1994). The Computer and Communications Industry Association made a similar proposal to the FCC in its written comments.

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Page 2

vice.^{2/} Importantly, the FCC did not require interstate carriers to pass through to their customers the benefits of this subsidy. Nor did the agency require that any voluntary pass-through go to any particular class of customers. And the agency did not establish any mechanism by which to determine the ultimate beneficiaries of this subsidy.

In comments filed June 29, 1994 with the FCC, the education coalition proposed a specific way in which the agency could modify its CPD requirement in order to ensure that consumers actually benefit from the CPD. More specifically, the coalition recommended that the Commission give each local telephone company a choice. The company either could continue to give interstate carriers a 0.5 percent subsidy in the price they pay for access service or it could price this service at a level which does not contain this subsidy and instead earmark for school infrastructure modernization an amount from access service revenues equal to the CPD amount. Under the coalition's plan, schools and libraries served by participating local telephone companies could pay for infrastructure modernization by drawing from this CPD account. The coalition asked that the FCC open a further rulemaking to develop implementation details.

While there has been almost no opposition to the coalition's proposal in written comments to the FCC, one recent press report quotes an unidentified "consumer advocate" as contending that the coalition's proposal constitutes an effort to convince the FCC to impose a "tax". Elsewhere, it has been asserted that the FCC does not have jurisdiction under the Communications Act to adopt this plan. Both arguments are frivolous as shown below.

I. The Coalition's Proposal Does Not Constitute a "Tax"

Adoption of the coalition's proposal would not put the FCC in the position of levying a "tax". First, the coalition proposal does not constitute a "tax" on interstate carriers. A "tax" is an assessment. The coalition has not proposed that the Commission levy an assessment on interstate carriers but instead that it eliminate a modest subsidy that the present CPD provides them.

^{2/} See Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd. 6786, 6796 (1990) (adopting existing CPD mechanism and explaining rationale for this mechanism).

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Nor does the coalition's proposal constitute a tax on local telephone companies. Voluntary payments do not constitute a "tax."^{3/} As indicated above, the coalition has asked the FCC to permit, but not to require, each local telephone company to decide whether or not to participate in the plan.

The coalition's proposal also is not a "tax" because its primary purpose is to accomplish a communications regulatory objective rather than to raise revenue. Courts have held that a regulation is a tax only when its primary purpose is to raise revenue.^{4/}

II. The FCC Has Clear Authority Under the Communications Act to Adopt the Coalition's Plan

The claim that the FCC does not have jurisdiction under the Communications Act to adopt the coalition's proposal is equally ridiculous. By its express terms, the Communications Act gives the Commission jurisdiction to adopt regulatory policies which ensure that "all the people of the United States . . . [have telecommunications service provided by] adequate facilities . . . [and delivered at] reasonable charges"^{5/} In Republican Administrations, the FCC has taken numerous steps to require telecommunications providers to subsidize specific customers in order to carry out this statutory obligation. For example, in 1987 the FCC adopted rules requiring communications service providers to pay up to half of poor peoples' local telephone installation and connection charges.^{6/} In 1986, the agency adopted rules requiring communications carriers to pay all or part of the subscriber line charge for poor people living in those states which provide a

^{3/} City of Vanceburg v. FERC, 571 F.2d 630 (D.C. Cir. 1977), cert. denied, 439 U.S. 818 (1978).

^{4/} San Juan Cellular Telep. v. Pub. Service Commission, 967 F.2d 683 (1st Cir. 1992); Rural Telephone Coalition v. FCC, 838 F.2d 1307, 1314 (D.C. Cir. 1988); Brock v. Washington Metro. Area Transit Auth., 796 F.2d 481, 489 (D.C. Cir. 1986), cert. denied, 481 U.S. 1013 (1987); Tindal v. Block, 717 F.2d 874, 887 (4th Cir. 1983), cert. denied, 465 U.S. 1080 (1984).

^{5/} 47 U.S.C. §§ 151, 154(i).

^{6/} Link Up America, 2 FCC Rcd. 2953, 2955-59 (1987).

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matching subsidy.^{7/} In 1984, it required carriers to subsidize the cost of telephone company local loops in areas where the cost of providing telephone service is substantially higher than the national average.^{8/} In 1989, the agency stated that it had jurisdiction under the Communications Act to require that carriers subsidize the cost of providing telephone relay service, a service which facilitates telephone communications by hearing impaired people.^{9/} Commission rules even require subsidized telephone rates for certain businesses. For example, for more than a decade the agency has required local telephone companies to offer subsidized rates to enhanced service providers.^{10/} The coalition's proposal -- by providing a regulatory mechanism to speed deployment of information infrastructure in the nation's schools and libraries -- is merely one more way in which the FCC can meet its statutory obligation to promote universal availability of telecommunications service.^{11/}

^{7/} Lifeline Assistance, 51 Fed. Reg. 1371 (1986), aff'd, 1 FCC Rcd. 431 (1986), modified, 2 FCC Rcd. at 2955-56, further modified, 3 FCC Rcd. 4543, 4552-53 (1988).

^{8/} Amendment of Part 67 Rules, 96 FCC 2d 781 (1984), modified, 50 Fed. Reg. 939 (1985), further modified, 2 FCC Rcd. 2953 (1987).

^{9/} Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons, 4 FCC Rcd. 6214, 6215-16 (1989).

^{10/} Access Charge Recon. Order 97 FCC 2d 682, 715 (1983), aff'd, 6 FCC Rcd. 4524, 4534-35 (1991) (specifying an interstate access charge for enhanced service providers that is steeply discounted from the access charge that all other service providers must pay).

^{11/} In the rulemaking in which the coalition made its proposal, the FCC itself recognized that it had jurisdiction to adopt a regulatory plan along the lines of the coalition's proposal. It did this by explicitly requesting proposals for modifying the existing price cap rules in ways that would speed "development of a ubiquitous, national information infrastructure." 9 FCC Rcd. at 1693.

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CONCLUSION

Contrary to recent claims, the education coalition's proposal for modifying price cap rules does not constitute a "tax", and the FCC plainly has jurisdiction under the Communications Act to adopt it.

Respectfully submitted

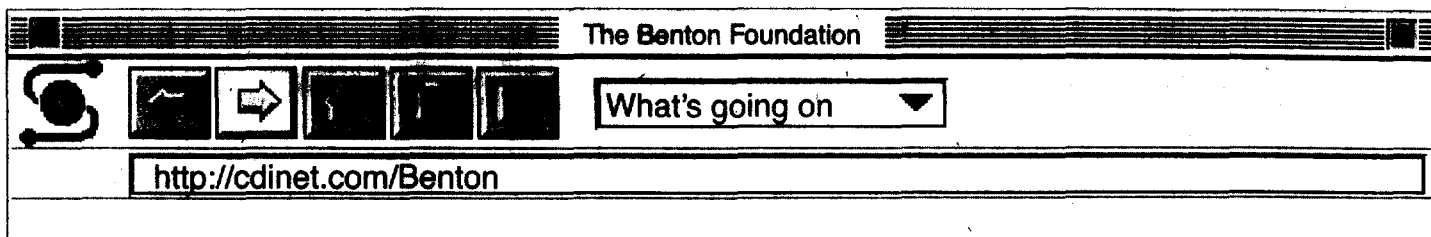
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By

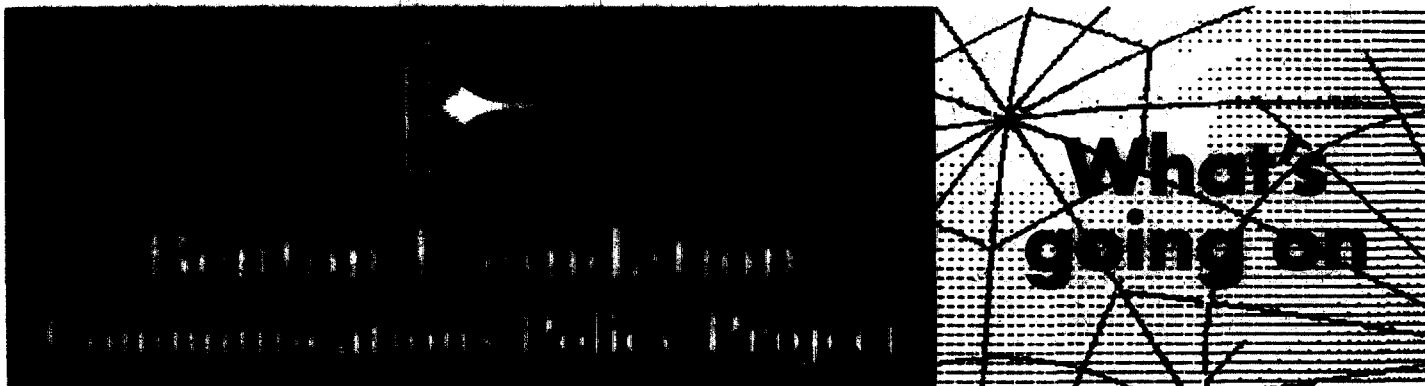
A handwritten signature in cursive script, appearing to read "Henry R. Rivera", is written over a horizontal line.

Henry R. Rivera
Rodney L. Joyce

Its Attorneys



/Benton/Compolicy/Whatsgoingon/



For a recent update, read What's going on with the National Information Infrastructure, which explores what's ahead in 1995 for some of the major players in the debate over America's telecommunications future.

Key players and places

Underlined words indicate a link to a new file or another Internet site

- Congress—Torn between visions for tomorrow and industry's demands today
- The Clinton Administration—Looking for low-cost ways to wire the country
- The Federal Communications Commission—A likely focal point for public interest efforts
- States—Laboratories for developing the I-way
- Challenges for nonprofits—Keeping a place at the negotiating table

How to use this World Wide Web site

More about the Benton Foundation

Larry Kirkman, Executive Director

Karen Menichelli, Associate Director

Andrew Blau, Director, Communications Policy Project

What's going on with the National Information Infrastructure

The 1994 elections dramatically changed the political landscape shaping the National Information Infrastructure (NII). With Republicans in control of Congress for the first time in 40 years, deregulation of the telephone and cable television industries is now likely to occur at an even faster pace than seemed probable in the first two years of the Clinton Administration. The heightened emphasis in Washington on letting market forces operate without interference means that the federal government is likely to assume a smaller role in decisions about how the NII is structured. But this, in turn, suggests that state and local governments and nonprofit organizations will have an opportunity to play much bigger roles, along with industry.

The upheaval in Washington poses new challenges for the public interest sector as it seeks to ensure that the converging telephone, television, and computer technologies provide noncommercial services and are available to everyone. "Nonprofits have to think about their role in a fundamentally different way," says Andrew Blau, director of the Communications Policy Project at the Benton Foundation, which commissioned this report. "We can't wait for the federal government to make openings for us."

In particular, Blau says, public interest groups must couple the continuing effort to sway policymakers in Washington with more work at the state and local levels, where a lot of decisions are going to be made about who has access to the new technologies and under what terms. And at least as important, nonprofit groups will have to recognize that they are not just participants in an abstract policy debate or consumers of whatever services the private sector decides to produce. Instead, they are providers and users of the information that could be the lifeblood of the new communications system.

As market forces assume an ever-larger role in shaping the information superhighway, the nonprofit sector will have to demonstrate that an open, interactive, high-capacity information system can be economically viable. This will require creating and expanding networks in the noncommercial sector, increasing the supply and improving the quality of information available over these networks, enhancing the technical skills of users, and boosting the market clout of nonprofit organizations by forming consortia or other alliances to purchase telecommunications services. Such market action could go a long way toward assuring the availability of information services and bringing down their cost.

There may be no alternative to developing such self-reliance. "There probably aren't going to be substantial new entitlements," says New York Law School Professor Allen Hammond. While Congress should take steps to assure that providers don't discriminate against consortia of small businesses or nonprofit organizations, the smaller players must take the initiative. "It's not enough to say it's right, it's good, and we should do it," says Hammond. "You need allies."

This report explores what's ahead in 1995 for some of the major players in the debate over America's telecommunications future.

Congress

Underlined names have a direct e-mail link

Underlined words indicate a link to a new file or another Internet site

Key players and places

The House

- Rep. Newt Gingrich(R) of Georgia—Speaker of the House. A forceful advocate of the information super-highway. Joined House Minority Leader Richard Gephardt(D) of Missouri to announce the establishment of a congressional online public access information system.
- Rep. Jack Fields(R) of Texas—Chair of the House Telecommunications Subcommittee. Helped devise telecommunications legislation that won overwhelming House approval in 1994.
- Rep. Edward Markey(D) of Massachusetts—former Chair and now ranking minority member of the House Telecommunications Subcommittee. Expected to work closely with Rep. Fields of Texas. The two co-wrote telecommunications legislation that won overwhelming House approval in 1994.
- Rep. Thomas Bliley(R) of Virginia—Chair of the House Commerce Committee. Will co-write, with Rep. Fields, the telecommunications bill due in early 1995.

The Senate

- Sen. Bob Dole(R) of Kansas—Senate majority leader. Circulated his own draft telecommunications bill in 1994 that would have rapidly relaxed government controls on both the telephone and cable television industries.
- Sen. Larry Pressler(R) of South Dakota—Chair of the Senate Commerce Committee. Favors access to information services in rural areas.
- Sen. Bob Packwood(R) of Oregon—former Chair of the Commerce Committee in the early 1980s and long-time opponent of cable and telephone regulation.

Online

- THOMAS: Legislative information on the Internet
- The U.S. Senate Gopher Directory —committee assignments, yearly Senate calendar, latest daily committee hearing schedules, current week's Senate floor schedule, visitor information.
- House of Representatives Gopher Directory —committee assignments, yearly House of Representatives calendar, latest daily committee hearing schedules, current week's House floor schedule, visitor information.
- House of Representatives Constituent E-Mail System —e-mail directory for House members and committees.
- C-SPAN Gopher —program schedules, press releases, 1994 Congressional election results.

House Speaker Newt Gingrich, who more than anyone else is setting the tone for the new Congress, is a forceful advocate of a truly interactive, open system, touting it as a way of expanding democracy, not just a vehicle for bringing new entertainment and commerce into people's homes. On the second day of the new Congress, he joined House Minority Leader Richard Gephardt of Missouri to announce the establishment of THOMAS (for Thomas Jefferson), an on-line system that gives citizens access through the Internet to such congressional information as the text of bills, the legislative calendar, and summaries of floor proceedings. In its first four-and-a-half days, 28,000 citizens and 2,500 institutions tapped into the system, downloading more than 175,000 documents. The future, Gingrich told a forum held by the Progress and Freedom Foundation on January 10, will require "radically higher understanding of the information age." And he said nobody should be left out: "There has to be a missionary spirit in America that says to the poorest child in America, 'Internet is for you.'"

But lawmakers may find themselves torn between that vision and the demands of an industry that sees the information superhighway primarily as a way of delivering movies, games, home shopping, and other forms of entertainment. According to the Center for Responsive Politics, political action committees representing the communications and electronics businesses gave congressional candidates almost \$5.5 million between January 1993 and June 1994, the most recent period for which figures are available. And that was just a small part of the industries' actual contributions. For the two years leading up to the 1992 elections, such PACs gave \$9.7 million, and individuals from the same industries kicked in \$11.5 million more, the center reports.

Rep. Jack Fields of Texas—the biggest House recipient of political contributions from communications, media, entertainment, telephone utilities, and telecommunication services and equipment PACs—will head the House Telecommunications Subcommittee in 1995. He is expected to work closely with Rep. Edward Markey of Massachusetts, the former chair and now the panel's ranking Democrat. The two helped devise telecommunications legislation that won overwhelming House approval in 1994. Democratic Rep. John Dingell of Michigan, the former chair of the House Energy and Commerce Committee, already has introduced essentially the same bill, now called H.R. 411.

In the Senate, leadership in the telecommunications field will fall to Sen. Larry Pressler of South Dakota, Chair of the Senate Commerce Committee. He has shown concern about the issue of access to information services in rural areas. But he will find himself pushed toward an aggressive deregulatory stance by Senate Majority Leader Robert Dole of Kansas and by Sen. Bob Packwood, head of the Commerce Committee in the early 1980s and long a dynamic opponent of cable and telephone regulation.

The regional "Baby Bell" telephone companies, which are among the information industries' most generous campaign contributors, could be big winners in the new Congress. They demonstrated their political clout in 1994 by playing a key role in blocking telecommunications legislation in the Senate. Their position this year will be strengthened by defeat of Rep. Jack Brooks of Texas, who as Chair of the House Judiciary Committee sought restraints on the regional telephone companies. The rise of Sen. Dole to the position of Senate majority leader also should be good news for them. Dole has sought to ease regulation of

the regional phone companies since at least 1985, and he circulated a draft telecommunications bill in 1994 that would have rapidly relaxed government controls on both the telephone and cable television industries. "Large telephone companies have acquired more clout," says Andy Schwartzman, executive director of the Media Access Project.

In the new environment, it's doubtful that Congress will be willing to use government power to extend the principle of universal access to cover new communications technologies. "Anything that looks like social engineering, the (regional telephone companies) will oppose," predicts David Moulton, who was chief counsel and staff director of the House Telecommunications Subcommittee until the Republican takeover of Congress. Adds Gene Kimmelman, who was counsel for the Senate Judiciary Committee's antitrust subcommittee during the last Congress: "Any kind of public intervention will be in trouble."

In particular, the Republican Congress is likely to be reluctant to keep provisions in the 1994 legislation that would have given the Federal Communications Commission responsibility to define and ensure universal access and to explore the possibility of offering nonprofit organizations preferential rates on the information superhighway. "Had we had an FCC, FDA (Food and Drug Administration), or an FTC (Federal Trade Commission) in Silicon Valley," Gingrich says, "we'd be about 150,000 or 200,000 jobs short, and we'd be back with mainframe computers because you'd still have bureaucrats studying whether or not to allow PCs to even exist."

The idea of using government power to foster noncommercial content on the information superhighway also faces considerable challenges. The new Republican majority has vowed to go after the National Endowment for the Arts and the National Endowment for the Humanities. And one of the biggest fights of 1995 may be over the Corporation for Public Broadcasting, which Gingrich has vowed to "zero out" (it is getting about \$285 million in federal funds this fiscal year).

Similarly, any government efforts to influence the choice or design of particular technologies will face more skepticism. The National Institute for Standards and Technology, which has done some work on telecommunications, and the Commerce Department's Public Telecommunications Facilities Program, which has provided grants to help build public broadcast stations, could both be in trouble. The National Telecommunications and Information Administration, which in 1994 provided \$24 million in grants for information infrastructure demonstration projects and has been appropriated \$64 million in 1995, hasn't come under fire yet. But it could face the budget ax as Republicans seek to fulfill their commitment to restrain spending and move toward a balanced federal budget.

Still, the Republicans have pledged to approach the legislation in a bipartisan fashion, and they have set an ambitious timetable for action. House Speaker Gingrich has said he would like the House to act on a bill in the first hundred days of the new Congress, even though telecommunications wasn't part of the GOP's "Contract with America" campaign promises. Rep. Fields and Rep. Thomas Bliley, chairman of the House Commerce Committee and a self-professed "friend of business," will seek a House vote by Easter. Fields said last week that he hopes to hold hearings in late January or early February, mark up a bill in committee in late February or early March, and take the legislation to the House floor before Easter. And Sen. Pressler, whose committee held its first hearing on telecommunications policy less than a week after Congress convened, promised to deliver a bill to President Clinton by July 4. Within days of the hearing, Pressler began circulating draft language for the "Telecommunications Competition and Deregulation Act of 1995," which outlines the goals and key mechanisms of the Senate Republican approach.

But aggressive Democratic opposition could be stirred if Republicans mount an assault on the 1992 Cable Act, as some have threatened. "If that happens, it will become a very partisan competition," warns Moulton. "As soon as there is no Democratic-Republican consensus, the interest groups will take over."

It's unclear how hard industry will push for legislation. The regional telephone companies, in particular, have accomplished much without legislation. Three federal district courts and one appeals court already have ruled that the 1992 Cable Television Act improperly blocked them from offering video services over telephone lines. In December 1994, Ameritech Corp. won FCC approval to build a fiber optic network and offer interactive video services to more than a million homes in the Midwest. The company says it hopes to start offering 390 channels by the end of the year. "It's not a matter of whether, it's only a matter of when the telephone companies enter the cable business," says New York Law School Prof. Hammond.

Meanwhile, cable operators are rushing to enter the information services business. Just since congressional attempts to legislate reform collapsed last September, Comcast Corp., one of the nation's top four cable operators, announced plans to deliver online services over its network, joining competitors Continental Cablevision Inc., Cox Enterprises Inc., and Cablevision Systems Corp. in trying to tap the capacity of coaxial cable. And Microsoft Corp. has sold Telecommunications Inc., the nation's largest cable operator, a 20% stake in its online service. By the end of 1996, boasts TCI Chairman John Malone, fiber optic or coaxial cable will cover virtually the entire country and the "terrestrial network that is the superhighway" will be in place. "We'll be done except for the terminals," he recently told Wired magazine.

The Clinton Administration

Underlined words indicate a link to a new file or another Internet site

Underlined names have a direct e-mail link

Key players and places

The White House

- President Clinton
- Vice President Gore
- Thomas Kalil—Director to the National Economic Council

U.S. Department of Commerce

- Secretary Ron Brown
- Larry Irving—Assistant Secretary for Communications and Information, U.S. Department of Commerce
- The National Information Infrastructure (NII)
- National Information Infrastructure Task Force (IIITF)
- National Telecommunications and Information Administration (NTIA)
- NTIA Grant Programs—TIIAP/PTFP/NECET
- Laura Breedon—Director, Telecommunications & Information Infrastructure Assistance Program (TIIAP is part of NTIA)
- The Patent and Trademark Office (PTO)
- Bruce Lehman—Director of the U.S. Patent Office

Government Information Locator System (GILS)

National Institute of Standards and Technology (NIST)

National Performance Review

Thomas Kalil, director to the White House's National Economic Council, believes the Administration and Congress can work together on telecommunications. The nonprofit sector, he argues, should seek provisions in the legislation that assure nondiscriminatory access to the information superhighway. "You shouldn't have the same companies controlling content and serving as the conduit," he argues. And despite the current industry emphasis on using the system primarily to deliver entertainment, he says cable companies and others should be encouraged to deploy technologies that don't preclude the possibility for full-fledged two-way communications.

But telecommunications legislation is just a small part of the effort to build the NII, Kalil notes. He says the Administration is forging ahead on other fronts. Vice President Gore hosted a federal-state-local conference on January 9, 1995, to discuss the role of the states and the federal government in telecommunications reform. And the NTIA plans in early February to announce guidelines for the second round of infor-

mation infrastructure demonstration grants. In the first round, "We learned there's a tremendous amount of interest and preparedness," says Laura Breeden, the program's director. Much as it did in the first round, the NTIA this year will be looking for projects that address such issues as how disadvantaged communities can gain access to the information infrastructure and how to break down barriers that impede the development of new information services. But Breeden says the competition will be structured differently from last year's open-ended process, with applicants now required to compete for funds in more narrowly defined categories. She says the agency plans to hold a series of meetings in different regions of the country to inform the public about the program and bring potential applicants together.

The Administration also is expected early this year to report the results of a comprehensive review of intellectual property and copyright issues involved in the NII. The effort has been headed by Bruce Lehman, head of the U.S. Patent Office. The Administration also will be implementing the Government Information Locator System, which aims to give citizens access to every government agency through the Internet. The Office of Management and Budget in December approved guidelines spelling out what kinds of information should be put in the system. The Administration already operates a bulletin board that lists every committee and subcommittee in government looking at telecommunications policy. The Administration also has established closed networks linking officials—budget analysts and legal officers, for instance—in various agencies.

Beyond its "reinventing government" efforts, the Administration is finding itself forced by budget constraints to seek ways to promote the information infrastructure that don't cost money. Kalil says it is looking at ways to use government buying power to lure sophisticated information services to areas that otherwise might not get them at affordable prices. If government offices demand a sufficient volume of such services in rural areas, providers will be prompted to establish a presence there, he explains. The result: other users will be able to tap into the information superhighway at relatively low cost.

Wiring schools to connect with the Internet remains one of the more popular information-infrastructure ideas. Vice President Gore has recommended using some "surplus" funds from Federal Communications Commission spectrum auctions to pay for such a wiring effort. But that money, like almost all federal funds during a time of tight budgets, is sure to be hotly contested. (Rep. Markey proposed using some of the surplus to pay for the Corporation for Public Broadcasting, an idea that has little chance given House Speaker Gingrich's antipathy toward public television.)

And significantly, the National Information Infrastructure Advisory Council soon will issue a draft report on the idea of offering nonprofit users preferential rates on the information superhighway. Senate antitrust aide Kimmelman says telecommunications legislation should require that noncommercial users of the information superhighway be charged only the incremental cost of providing their service, not the total underlying cost. The idea isn't without precedent. Nonprofit organizations, for instance, have long qualified for lower postal rates. Kimmelman says the concept needs further economic analysis.

The Federal Communications Commission

Key players and places

The Federal Communications Commission

- Andy Schwartzman—Executive Director of the Media Access Project
- Jeffrey Chester—Executive Director of the Center for Media Education
- Jill Lesser—Director, Civic Media Project

With Congress less inclined to pursue social objectives, the FCC could become a more important focus for public interest efforts. "The FCC will be particularly fruitful given the change in Congress," says Jeffrey Chester, executive director of the Center for Media Education. In particular, Chester's group is pressing the FCC to issue rules setting aside cable television channels for noncommercial usage. It also is pressing the FCC to establish special rates and otherwise facilitate nonprofit programming on telephone companies' new "video dialtone" systems.

With court action pending on whether the FCC's 1994 decision to authorize telephone companies to offer video services violated the 1992 cable law, critics like the Media Access Project's Schwartzman will be pressing the Commission to limit what they see as a grave threat to the principle of common carriage.

The Commission says it will require telephone companies that offer video services to continue acting as common carriers—that is, it will prevent them from controlling what video programming goes out over their wires. But Schwartzman and other critics worry that telephone companies could affect content by packaging video services in certain ways, or that their video services could crowd out other uses of the telephone lines. Schwartzman says that while his concerns can't be completely assuaged by how the FCC handles specific applications, they could be mitigated if the Commission adopts cost-allocation rules that spare telephone users from having to subsidize video services, imposes strong controls to prevent redlining, and takes steps to ensure that noncommercial uses of the telephone system aren't impeded by the new video commercial ventures.

Meanwhile, the FCC will come under renewed pressure from broadcasters to liberalize rules limiting the number of radio and television stations that can be under the same ownership. Broadcasters contend that such a relaxation is necessary to enable them to achieve economies of scale. Schwartzman says that any changes the FCC is likely to make will tend to reduce diversity in broadcasting.

The Commission will also continue auctioning spectrum in 1995, completing its sale of licenses for new wireless "personal communications services" and proceeding with auctions for microwave and other competitors to cable television. Schwartzman voices confidence that rules governing the auction process give small businesses and women and minority owners a substantial opportunity to win licenses.

Enforcement of the 1992 Cable Act will be a continuing preoccupation. The Commission is under

great pressure from cable operators to allow higher rates, at least in part because they hope to invest substantially in new plant and equipment in order to compete with telephone companies. The Commission, which in 1994 allowed cable companies higher rates for new programming options, probably will face political pressure to keep rates down. But the new Republican majority in Congress might be more tolerant of rate hikes than Democrats were.

The states

Key players and places

- Linda Tarr-Whelan—President and Chief Executive of the Center for Policy Alternatives
- Laurie Itkin—telecommunications policy expert at the National Conference of State Legislatures
- Michelle Harris—Assistant Director for congressional and public relations at the National Association of Regulatory Utility Commissioners
- Ron Choura—staff analyst for Michigan's Public Service Commission

Early indications are that the increased federal emphasis on deregulation will be mirrored in state governments, according to Linda Tarr-Whelan, president and chief executive of the Center for Policy Alternatives. But she notes that it's too early to predict what course states will take, since there has been a 40% turnover in state legislatures as a result of the 1994 elections.

To the extent Republicans pursue policies designed to reduce federal power, states could become laboratories for developing the information superhighway. The Center has developed model telecommunications legislation for states, addressing such issues as access, privacy, adequacy of information, and competition among communications service providers.

In addition to being more inclined to favor deregulation, states are showing increased interest in using telecommunications policies to spur development, Tarr-Whelan says. States are exploring a wide variety of approaches to building the information superhighway—ranging from Iowa, where the state government owns and controls a 3,000-mile fiber optic network; to North Carolina, where the state helps finance and run a largely privately owned fiber-optic system that is projected to grow to 116,000 miles; to California, where Pacific Bell promises to build a network that will provide advanced data and video services to the entire state by the year 2010. The Center plans to hold a conference on February 28 exploring telecommunications as a development tool.

A Republican commitment to federalism also could mean that states will assume a bigger role in defining and ensuring universal service. "The FCC and the states have worked together to promote universal service goals, but defining the precise components of universal service has in the past been a state responsibility," says Laurie Itkin, telecommunications policy expert at the National Conference of State Legislatures.

Local officials increasingly are becoming involved in telecommunications issues. On January 15, a wide range of officials from business, government, and the nonprofit sector gathered in Honolulu for the "Hawaii Information Congress" to advise the state legislature on information issues. Oregon has launched a statewide planning process involving nonprofit groups, among others. Local officials are getting involved, too; last March, a broad-based mayor's advisory committee in San Diego released a detailed report on telecommunications.

Connecticut, Vermont, and Wisconsin already have approved telecommunications legislation setting standards for universal service, among other things. Further state action is likely. California's Public Utilities Commission is due to present recommendations on January 6, 1996, on what services are essential, how to provide them to all people at affordable prices, and how to make advanced technology more widely available. Itkin says the California commission is looking specifically at ways to include "enhanced services" in the definition of universal service.

The Kansas legislature directed the Kansas Corporation Commission to define universal service, determine how well it currently is being achieved, establish telecommunications policies for high-cost areas, and define "lifeline telephone service" and how to pay for it. A task force appointed by the governor already has recommended that every citizen have access to single-party touch-tone service and a package of electronic service programs that would grow as new services become available at reasonable cost. North Dakota plans to study telecommunications needs, policy issues, and barriers to access. Nevada has established an advisory Telecommunications Council to explore ways to use telecommunications to improve the delivery of state services.

Technological change isn't the only factor prompting states to address the issue of universal service. Growing competition in the intrastate and local telephone markets is also forcing them to act. Michelle Harris, assistant director for congressional and public relations at the National Association of Regulatory Utility Commissioners, says Illinois, Maryland, Oregon, Massachusetts, Montana, New York, Washington, and Wisconsin have moved aggressively to allow local service competition. More are expected to follow suit.

Some community groups are eager to see states retain a big regulatory role over the information infrastructure because public utilities commissions at times have used their authority to force service providers to build infrastructure. In Ohio, regulators recently required Ameritech to contribute \$18 million to wire schools, plus \$2.2 million to create 14 training and access centers in seven cities, in return for winning greater freedom to raise rates.

But some contend that market forces can be employed to accomplish such objectives, possibly at lower cost. In Michigan, businesses and schools have joined forces to purchase access to the Internet. The businesses pay the cost of connecting the schools (for which they can claim tax deductions). Once the service is extended, they then can tap into the network themselves at a very low cost. Such arrangements take the high cost out of gaining access to the information superhighway.

Small users hoping to use the most sophisticated information services currently are subject to the whims of the market. Those in urban areas or near large buyers who attract capital investment by telecommunications companies can obtain services at relatively low cost. But those who aren't so conveniently located can find service quite expensive. "You've got to be in the right place at the right time," says Ron Choura, a staff analyst for the Michigan Public Service Commission. To take the serendipity out of buying information services, he says, "consumers and local communities have to be much more engaged."

Challenges for nonprofits

Key players and places

Underlined words indicate a link to a new file or another Internet site

Underlined names have a direct e-mail link

- Laura Breeden—Director, Telecommunications & Information Infrastructure Assistance Program (TIIAP is part of NTIA)
- Andrew Blau—Director of the Communications Policy Project at the Benton Foundation
- Stephen Wolff—former Director of the networking division at the National Science Foundation
- Jerry Berman—Executive Director of the Center for Democracy and Technology
- Robert Loeb—President of Telecommunication Cooperative Network (TCN)
- Public Information Exchange
- Unison Institute
- RTK ("Right to Know") Net
- National Public Telecommunications Network
- Tom Freebairn—The Information Infrastructure Clearinghouse
- Patrice McDermott—OMB Watch's information policy analyst
- American Library Association
- Leslie Harris—Director of Public Policy, People for the American Way
- Jill Lesser—Director, Civic Media Project

While seeking to influence policy will continue to be important, nonprofit groups also have to become "creators of content, users of information systems, and participants in the marketplace" says the Benton Foundation's Blau. "Fortunately, the technology itself points to small-scale, affordable projects that can be done now by nonprofits providing service at the grassroots level."

There is ample evidence that the noncommercial sector represents a significant share of the market for emerging information technologies. Polls last year by Macworld Magazine, Louis Harris, Dataquest, and MCI showed that consumers by substantial margins are more interested in receiving news and civic improvement services than home shopping and entertainment.

The explosive, decentralized growth of the Internet itself confirms the existence of a burgeoning market. It has grown from having just 213 host computers in August 1981 to 992,000 in July 1992 to 3.2 million last July. In just the four months ended last November, the number of host computers leaped by more than 700,000, to almost 3.9 million.

The Internet is "vigorous and bubbling," with "no sign of middle-age spread," says Stephen Wolff, until recently the director of the networking division at the National Science Foundation. While commercial use of the Internet is increasing—a growing number of companies are using it to spread information about themselves, and arrangements to transfer funds are becoming available—much of the traffic remains noncommercial.

In a political environment hostile to government intervention, building the noncommercial market may be more important than political clout. There clearly is potential for growth. Today, 35.4 million—or slightly more than a third—of all U.S. households have computers, according to Link Resources Corp., a market research firm. Link projects that the number will jump to 59 million by the end of the decade. And the number of households subscribing to online services will surge from 3.5 million to 25 million.

Nonprofits may thus have to adjust their thinking to recognize the new opportunities presented by such expansion. "Public interest groups that want government to build the network or to set aside part of the network for a public right of way are in serious trouble," warns Jerry Berman, executive director of the Center for Democracy and Technology. "There is no consensus for that."

There's a greater chance of building support for the idea of using market forces to foster public uses of the information superhighway. Robert Loeb, President of the Telecommunications Cooperative Network, argues that public interest groups should stop worrying about securing rights-of-way on the information superhighway and focus instead on producing and marketing high-value, noncommercial information that commands space by dint of its value. Loeb, whose organization helps nonprofits band together to purchase telecommunications services, says the problem of gaining access is "miniscule" compared with the cost of producing good programming or information and promoting its distribution. The solution: "a cooperative marketing strategy that recognizes that, in an information society, nonprofits produce what everybody wants."

Loeb urges nonprofits to start thinking of themselves more as producers of information than as consumers. As producers, he argues, they should seek compensation for their output. Currently, he says, nonprofits frequently give away information they have compiled, only to see commercial vendors sell it for a profit. In the policy arena, Loeb says that government, rather than continually funding institutions like the Corporation for Public Broadcasting, should provide seed money—or "venture capital"—to help launch information enterprises that can become self-sustaining once their start-up needs are met.

Nonprofit groups increasingly are helping cultivate the market for information services. The newly formed Public Information Exchange, for instance, is helping to organize sectors of the nonprofit world to serve as providers of online information. The initial alliances it is forming are among health, environmental, and voter education groups. OMB Watch and the Unison Institute in November started putting Home Mortgage Disclosure Act data online through their RTK ("Right to Know") Net. The two prodded the Department of Housing and Urban Development to make the data available, and after they won the contract to put it online, they added information from the Census Bureau's American Housing Survey, enabling users to correlate bank mortgage-lending behavior with housing characteristics in various census tracts. Meanwhile, the National Public Telecommunications Network is aggressively promoting community networking. Its "free net movement," which seeks to help communities establish central bulletin boards and e-mail systems, just announced plans to add 35 to 40 new affiliates in the Great Lakes region.

Thomas Freebairn, director of the the Information Infrastructure Clearinghouse, says there is a tremendous need for technical training and assistance in the nonprofit world. Noncommercial organizations generally haven't developed as much technical proficiency in using the information superhighway as many corporations have, but efforts are under way to give the nonprofit sector technical support. A coalition including the Bauman Foundation and OMB Watch, for instance, plans to survey various nonprofit groups to determine, among other things, their technical needs in using the information superhighway. It hopes to

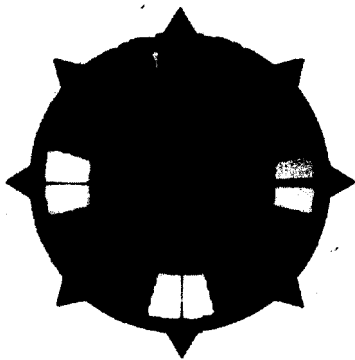
secure funds to conduct briefings, tailored to the needs it finds, to help community groups identify government information sources that would help them form "sustainable communities," says Patrice McDermott, OMB Watch's information policy analyst.

As such activities demonstrate, public interest advocates have come a long way in the last year toward gaining a voice in shaping the National Information Infrastructure. But the arena has grown, and the challenge has become both bigger and more varied. As Blau and others see it, the process of building a constituency for noncommercial services is just beginning. In Washington DC, nonprofit groups will have to fight to keep the place they gained at the negotiating table last year. And while continuing the effort to convince the federal government of the need to hold open avenues for noncommercial use of emerging communications technologies, they also will have to become more involved at the local and state levels, where interest in communications policy is rapidly growing.

But a rising number of public interest advocates believe even more is required. They say nonprofit groups must also work with the telecommunications industry and assert their role as full partners in shaping the emerging infrastructure. As Blau and Loeb see it, nonprofits must come to see themselves not just as advocates but as participants in the new system. In the latter role, nonprofits must take the initiative to produce high-quality, useful, noncommercial information. And they must seek to ensure that such information is widely accessible. Only by doing so will the nonprofit sector be able to demonstrate that a truly open, interactive, high-capacity information system can be built and sustained.

This update of What's Going On was downloaded from the Benton Foundation's World Wide Web server for its Communications Policy Project. Use Mosaic or another WWW browser and url to <http://cdinet.com/Benton>. Benton commissioned Christopher Conte and Communications Development Incorporated in Washington DC to prepare this update. Conte formerly was an editor at the Wall Street Journal.

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ESTIMATED COSTS OF CONNECTING PUBLIC SCHOOLS TO THE NII

NEA Research

	Low	High
LAN with Shared Modem Model		
One--Time Installation	2,015,865,000	6,065,551,600
Per Student	46.57	140.13
Annual Operating Costs	1,262,622,000	3,014,291,600
Per Student	29.17	69.64
LAN with Router Model		
One--Time Installation	4,182,542,900	10,364,196,000
Per Student	96.63	239.45
Annual Operating Costs	1,216,960,600	3,379,404,500
Per Student	28.12	78.08
LAN with Local Server and Dedicated Line Costs		
One--Time Installation	9,280,931,800	21,891,252,000
Per Student	214.42	505.76
Annual Operating Costs	1,752,824,000	4,611,794,500
Per Student	40.50	106.55
Ubiquitous LAN with Local Server and High Speed Line Model Costs		
One--Time Installation	50,924,605,600	112,914,846,000
Per Student	1176.52	2808.70
Annual Operating Costs	4,018,712,600	10,029,904,000
Per Student	92.85	231.72

Sources:

Number of Pupils - 43,283,988 (NEA Research, 1993-94 Estimates of School Statistics)

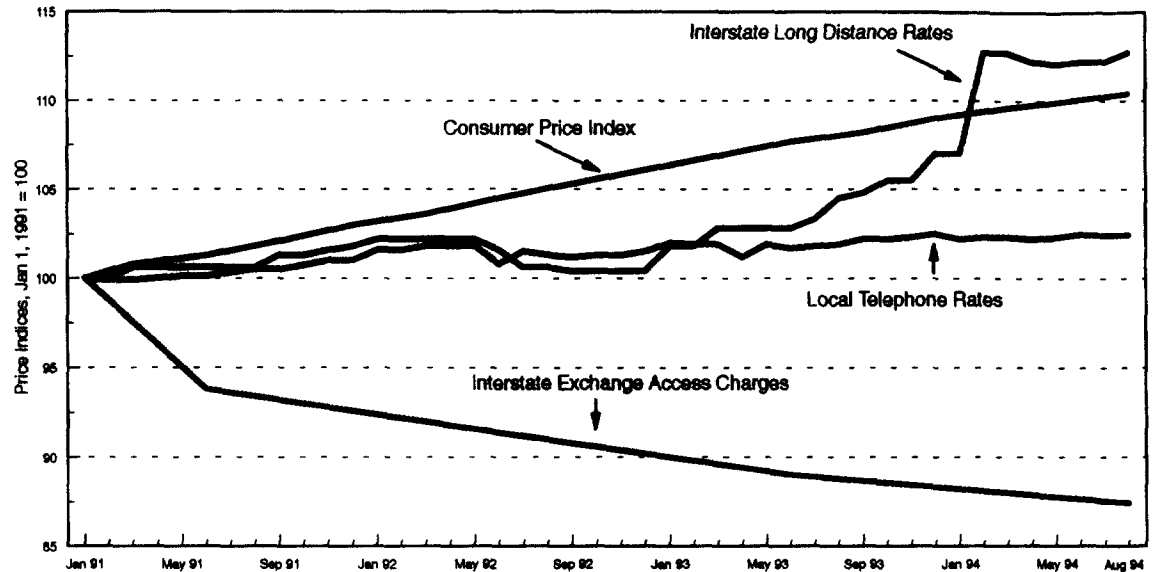
Number of Districts - 15,048 (NEA Research, 1993-94 Estimates of School Statistics)

Number of Public Schools - 84, 578 (U.S. Dept. of Education, Digest of Education Statistics 1993)

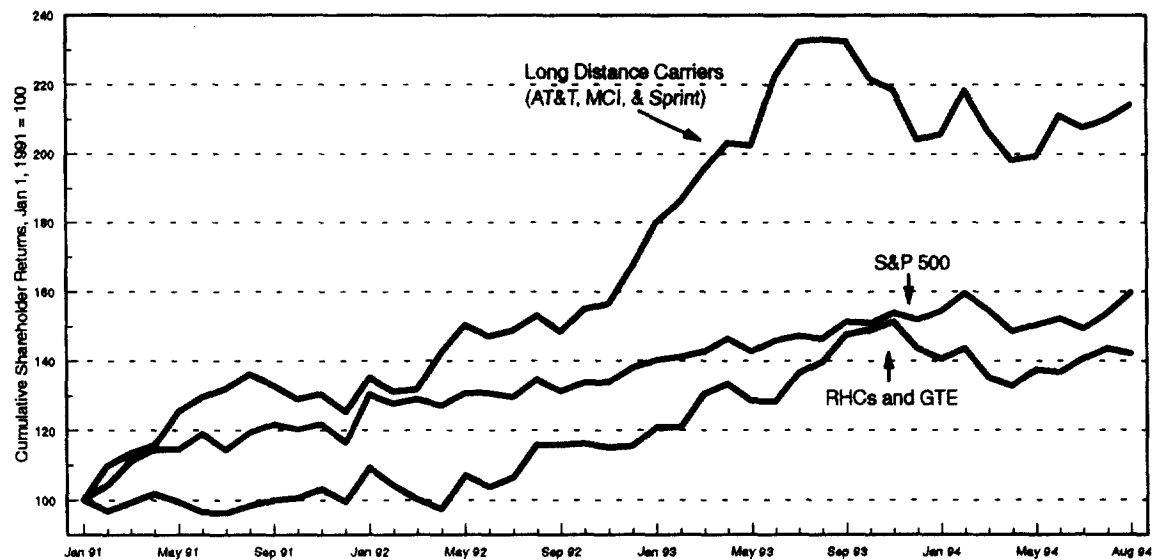
School and District Costs - U.S. Dept. of Ed., Connecting K-12 Schools to the NII (Working Paper)

Recent Trends In Prices And Shareholder Returns In Local And Long Distance Telecommunications Markets

Despite reductions in exchange access charges that have occurred since the LECs' price cap plan was implemented in 1991, the interexchange carriers (IXCs) have raised interstate long distance rates sharply over the past 2 years. . .



... shifting billions of dollars from local and long distance customers to IXC shareholders.



Note: Cumulative shareholder returns are based on market weighted monthly averages of total shareholder returns for individual companies.

Sources: Bureau of Labor Statistics, FCC, Compustat